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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/576,102

12/05/2006

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EXAMINER

BAINBRIDGE, ANDREW PHILIP

ART UNIT

PAPER NUMBER

3754

NOTIFICATION DATE

DELIVERY MODE

07/22/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/576,102	<b>Applicant(s)</b> PRUVOT ET AL.	
	<b>Examiner</b> ANDREW BAINBRIDGE	<b>Art Unit</b> 3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 28 April 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-9, 11, 13, 16 and 17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11 and 13 is/are rejected.
- 7) ☒ Claim(s) 16 and 17 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 April 2010 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)         | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Drawings*

1. The drawings were received on 4/28/2010. These drawings are accepted.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. **Claims 1, 3-5, 9, 11 and 13 are rejected under 35 U.S.C. 103(a)** as being unpatentable over WO/02/081101 (Petit) in view of US 5,752,629 (Hardy).

5. Petit in figures 1-3 discloses a fluid product dispensing device with a removable overcap 60 and a single piece plastic reservoir 10 with a neck 11 and a radial shoulder (see figure 1) that forms an interference fit with the shoulder of the dispensing head 50 that is secured to the dispensing orifice 51 that when actuated, actuates the pump 20, the neck 11 also forming a second radial shoulder (see figure 1) whereby the dispensing head 50 can not actuate any further because it can not fit any farther down

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the neck of the reservoir 10. Petit does not teach that the reservoir has at least one orifice to hold a filter that allows air to enter into the reservoir as the dispensing unit is actuated, and that the orifice is formed as the reservoir is formed. Hardy in figures 1-5 teaches an opening or orifice 270 in the region directly above the reservoir 212 with a snap in filter 284 that allows air to enter after being filtered into the reservoir's volume of space during each actuation stroke. It would be obvious to one of ordinary skill in the art to adapt hardy to petit because hardy teaches a way to assure that a partial vacuum does not form in the reservoir as time goes by which could interfere with the dispensing operation while maintaining a sanitary environment in the reservoir. It is noted that claim 11 claims that the reservoir and the orifice be formed at the same time as the reservoir, but this is an example of a "product by process" claim, and it has been held that the method of forming a device is not germane to the issue of patentability of the device itself. See *In Re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985).

6. **Claims 2 and 6-8 are rejected under 35 U.S.C. 103(a)** as being unpatentable over Petit in view of Hardy as applied in claim 1, and further in view of US 2003/0150882 (Bougamont et al.).

7. Petit in view of Hardy as applied in claim 1 has all of the elements of claims 2 and 6-8 except for having a neck seal that is over-molded on the neck of the reservoir with an injected thermoplastic made by dual injection molding, with a reception profile adapted to hold the seal. It is noted as explained above in paragraph 5 that "product by a certain process" claim limitations are given very little weight. Bougamont in figures 2-

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2C teaches a fluid product dispenser (see figure 2A0 with a reservoir R containing a fluid product (paragraph 0025) with a pump P that dispenses the product of the fluid reservoir with a dispensing head K to actuate the pump P the reservoir R is a single piece (embodiment "b") a neck seal J with a raised ring or bump R (see figure 2A) for the seal J to serve as a reception profile for the seal J that is held in place by ferrule D. It would be obvious to one of ordinary skill in the art to use the neck seal and reception profile of Bougamont to make the Petit device even more reliably seated.

***Allowable Subject Matter***

8. **Claims 16-17 are objected to as being dependent upon a rejected base claim**, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

9. Applicant's arguments with respect to claims 1-2, 7-8, 12-13 and 15 have been considered but are moot in view of the new ground(s) of rejection. The Examiner thanks the Applicant for clarifying the over molding concerns that the Examiner expressed, and the Examiner agrees that if the ferrule is a separate piece, the device can be made as described.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREW BAINBRIDGE whose telephone number is (571)270-3767. The examiner can normally be reached on Monday - Friday 9 AM to 6 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/A. B./  
Examiner, Art Unit

/Kevin P. Shaver/  
Supervisory Patent Examiner, Art  
Unit 3754